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APPLICATION NO.	F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/084,579		02/26/2002	Frederick L. Jordan	HO-P02917US9	6019	
26271	7590	11/04/2004		EXAM	EXAMINER	
FULBRIGH 1301 MCKIN		WORSKI, LLP	TOOMER, CEPHIA D			
SUITE 5100				ART UNIT	PAPER NUMBER	
HOUSTON,	TX 770	10-3095		1714		
				DATE MAIL ED: 11/04/2004		

Please find below and/or attached an Office communication concerning this application or proceeding.

### Office Action Summary    Tomographic   Communication   Com			Application No.	Applicant(s)	GÞ
Period for Reply  Period for R	ŀ		10/084,579	JORDAN, FREDERIO	CK L.
- The MAILING DATE of this communication appears on the cover sheet with the correspondence address → Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Earnéose of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a neph be timely vised and the sky of plotters from the maintained and the sky of plotters from the maintained sheet of the destination of their plot is provided above. The maintained sheet is the state of the state of the plot is provided above. The maintained plotter of the plot is provided above. The maintained plotter of the plot is provided above. The maintained plotter of the plot is provided above. The maintained plotter of this continuation. Plotter of the plotter plot is provided above. The maintained plotter of the continuation and plotter from the plotter of the plot	Office Action Summary		Examiner		
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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of some may be evaluable under the provisions of 3° CFR 1 136(a). In no event, however, may a reply be limitly titled after SIX (8) MCNTHS from the mailing date of this communication.  Extensions of some may be evaluable under the provisions of 3° CFR 1 136(a). In no event, however, may a reply be limitly titled after SIX (8) MCNTHS from the mailing date of this communication.  Falure to reply within the set or extended parind for reply will, by statute, cause the application to become ABANDONIC or replaced to the communication.  Falure term department. Sea 3° CFR 1.70(b).  This action is FINAL.  2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 37-62 and 64-89 is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  6) Claim(s) 37-62 and 64-89 is/are allowed.  6) Claim(s) 55-62 and 64-89 is/are allowed.  6) Claim(s) 37-40.45-45.51 and 52 is/are rejected to.  7) The specification is objected to by the Examiner.  10) The drawing(s) filed on is/are: a) cacepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. Sea 3° CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. Sea 3° CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  12) Cartified copies of the priority documents have been received in Application No.  2) Copies of the certified copies of the priority documents have been received.  2) Certified copies of the priority documents have bee	Period f	The MAILING DATE of this communication a	ppears on the cover sheet	with the correspondence addre	ess
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## **DETAILED ACTION**

## Continued Examination Under 37 CFR 1.114

- 1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 12, 2004 has been entered.
- 2. This Office action is in response to the amendment filed August 12, 2004 in which claims 44, 46, 50, 61, 64, 71, 74, 78, 82 and 88 were amended and claims 63 and 90 were canceled.
- 3. The Double Patenting rejection is withdrawn in view of Applicant filing a Terminal Disclaimer.
- 4. The rejections of the claims under 35 USC 112, first and second paragraphs are withdrawn in view of the amendment to the claims and Applicant's arguments.
- 5. The rejection of the claims under 35 USC 102(b) is withdrawn in view of the amendment to the claims.

## Claim Rejections - 35 USC § 103

- 6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 37-40, 45-48 and 51-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk (US 5,023,095).

Kirk teaches a composition comprising beta-carotene, at least one edible oil and dl-alpha-tocopherol (see abstract; col. 2, lines 17-24). The edible oil may be selected from coconut, palm, olive, peanut (a member of the *Leguminosae* family), and corn (grain). Kirk teaches that the oils may be used in combination (see col. 3, lines 22-28). Kirk also teaches that dl-alpha-tocopherol is an antioxidant (see col. 3, lines 47-50). Kirk teaches the limitations of the claims other than the differences that are discussed below.

In the first aspect, Kirk differs from the claims in that she does not specifically teach applicant's intended use. However, intended use is given no patentable weight in claims that are directed to the composition per se.

In the second aspect, Kirk differs from the claims in that she does not teach that the edible oils function as thermal stabilizers. However, given that Kirk teaches some of the same oils as applicant in combination with beta-carotene, it would be reasonable to expect that the oils would function in this capacity. Furthermore, a compound and its properties are inseparable. In re Papesch, 137 USPQ 43 (CCPA 1963).

8. Claims 41-44, 49, 50, 53 and 54 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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9. Claims 55-62 and 64-89 are allowed. The prior art fails to teach or suggest the claimed fuel additive and fuel composition containing said additive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Cephia D. Toomer Primary Examiner Art Unit 1714